

March 16, 2005

Honorable Greg Nickels
Mayor, City of Seattle
P.O. Box 94749
Seattle, WA 98124-4749

Re: Proposed Draft Update of Environmental Critical Areas Ordinance

Dear Mayor Nickels:

Adopting new environmental regulations is ineffective if DPD is unwilling or unable to enforce them. At present, DPD only staffs its code compliance department and responds to reports of illegal activity on Monday through Friday. Imagine if the Seattle Police only staffed and responded to burglaries on a Monday through Friday basis. You would have the same result we have observed in our neighborhood, where illegal tree cutting by professional loggers occurs on the weekend. DPD needs to staff its compliance office on the weekend and revise the ECAO to permit effective enforcement.

Last month a professional logger was illegally cutting trees on an ECA "steep slope" at 10430 Lake City Way NE after starting promptly at 7:30am on Saturday. (The same property owner has acknowledged having loggers cut down other mature trees in that "steep slope" in the past without a permit and DPD has declined to cite him.) DPD's failure to take action for ECA ordinance violations encourages additional violations by the same property owner.

I asked one of the loggers if the commercial property owner had a permit to cut the 100 to 150 foot tall trees being cut on a designated "steep slope". He replied, "I don't know." Government agencies regulating other industries utilize regulations prohibiting "aiding and abetting" violations. DPD needs to enforce regulations prohibiting "aiding and abetting" violations in the ECAO. Then professionals will care if they have been hired to work without a permit and violate the code. If DPD's excuse for failing to enforce ECA rules by professional violators is that DPD lacks adequate remedies, then the staff needs to propose new remedies with this proposed amendment. This will provide deterrence to professional loggers cutting trees in violation of DPD ordinances and other professionals who presently can confidently ignore ECA regulations. Currently, they always profit from their illegal activity, because the property owners pay them and DPD does not take action against professional violators. This is a major defect in DPD regulation and renders it ineffective.

DPD should drop its proposed plan to eliminate the tree and vegetation removal permit. It is proposed to be replaced by allowing "normal and routine" pruning pursuant to a tree and revegetation plan and permit. Courts have repeatedly held sanctions for violations are unenforceable if the regulations are vague, just as a prohibition against driving automobiles "too fast" in Seattle would be unenforceable. What is "normal" pruning is not clear and risks eliminating protection of ECA steep slopes. After a recent illegal tree cutting in the "steep slope" at 10430 Lake City Way NE, the property owner, Mr. Chou, was interviewed by a KING 5 TV newsman. Mr. Chou described reducing a 150 foot tree to a 40 foot stump with no limbs or branches, and cutting off all limbs, branches, and twigs from several other 100 foot trees, leaving only the trunk - as just "pruning" the trees. Perhaps he thought DPD's proposal was already in effect. Since there can be a difference of opinion as to what is

“normal” pruning, such a proposed regulation is worthless and opens the door to legitimize the destruction of supposedly protected trees.

At 10502 Lake City Way NE, the developer cut down three mature evergreen trees on a steep slope without a permit. The DPD’s “revegetation plan” consisted of the planting of three 9 inch high by 6 inch wide bushes which were not watered and have all died. At 2517 NE 105th Street the same developer cut down over twenty 100 foot tall trees without a permit. The DPD’s “revegetation plan” consisted of planting about 15 tiny trees or bushes several years after the tree cutting. Neither plan even remotely came close to replacing the trees and other vegetation that was removed. These examples of revegetation plans, approved by the DPD after removal of large amounts of forest cover, indicate the folly of the new DPD proposal to permit grading and cutting in ECA areas in return for an approved “revegetation plan”. In addition, the proposal states in 25.09.320 A (2) (a) that the application submittal standards and general development standards “do not apply”. This reduces environmental protection.

The proposal redefines “steep slopes” to eliminate areas containing certain retaining walls, etc., thus reducing the amount of land protected in Seattle as “steep slopes”.

Under 25.09.180 E (1) (b), the proposal permits construction in steep slope areas by creating a new streamlined variance process under Section 25.09.280B. The proposal *eliminates* the rights the public has had in the past to comment on such proposals. Why shouldn’t the public have the same rights it has under normal variances from the building code? The proposal to eliminate the public’s right to provide input into this variance process, should be stricken.

The proposal eliminates the prohibition (under deleted 25.09.320 B (1)), against removing any tree of 6” caliper three feet above the ground, (2) any combination of smaller trees, and (3) any area of vegetation of 750 square feet or more. It is replaced in part by 25.09.330 A (1) (c) requiring a site plan indicating 6” trees *four and a half feet* above the ground and “significant” vegetation, before trees and vegetation are cut in ECAs under the proposed permit. What is “significant” is no longer defined, leaving it open to interpretation, misinterpretation, or a later definition which eliminates what was defined as protected vegetation under the old code. Measuring the trees higher above the ground in the new proposal results in fewer trees being identified on the site survey provided to DPD staff. Trees and other vegetation which met the old standard but not the new, simply disappear from the view of DPD staff. Thus, they will not be considered for preservation and can be cut down. The proposed tree and vegetation removal permit is an unjustified reduction in environmental protection in Seattle and should not be adopted.

Director Sigumura and other DPD officials have indicated inadequate enforcement remedies restrict the department’s enforcement efforts against violators. The proposal needs additional remedies, which the DPD can use against those who deliberately violate the law. Other nearby communities have remedies such as a six-year ban on improvements on property when their Department has found violations have occurred. This should be a remedy available to the City of Seattle as well. In addition, fines are set so low the Department has difficulty funding its enforcement effort. Potential fines need to be increased beyond the \$500 per day contained in the old code and carried over in the proposed code. Over time, inflation has decreased the deterrent value of such a low penalty and makes violations more attractive than compliance.

The proposed code appears to contain a shield for professionals who make their living by being hired to violate the code. Under 25.09.410 C, DPD staff has added a new section stating “It is the intent of this chapter to place the obligation of complying with its requirements upon the owner...”. This new section reads as a limitation on the application of the penalty section. This is bad public policy and this subsection should be deleted or additional language should be added to extend its application to persons beyond those such as an owner or lessee with an obligation to maintain the property.

The proposal deletes criminal penalties for violations and replaces it with 25.09.470, which states it is only an “Alternative” to the civil penalty. Most jurisdictions in the United States prefer to have both civil and criminal penalties available as remedies, rather than limiting the enforcement agency to choosing between civil or criminal penalties. The proposal needs to be amended to again make criminal penalties an additional available remedy, instead of an “alternative” one.

Under the existing procedure, when the DPD issues a “stop work order” its’ existence is kept secret from the complaining adjoining property owners. When a developer started grading about 20,000 square feet on a hillside at 2517 NE 105th Street without a permit, adjoining property owners complained and the DPD issued a stop work order. The complaining adjoining property owners were *not* told by DPD staff of the issuance of the stop work order and the developer continued the illegal grading on the following weekend. The revised code needs to require prominent posting of stop work orders and notice to adjoining property owners.

After the developer finished stripping all vegetation off the roughly 20,000 square foot hillside without a grading permit, the raw dirt was left uncovered and open to the rain for a year, to wash off the hillside onto the property below and into the street and an uncovered storm drain leading to Thornton Creek. The DPD apparently lacks effective regulations which would allow it to take action itself to limit runoff and other conditions resulting in an ongoing harm to the environment. DPD staff need to develop new regulations to permit the DPD to act promptly to hire private contractors or use its personnel to remedy code violations when the owner is unwilling to do so.

Sincerely,

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Cc: DPD
City Council